Supreme Court, U.S.
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No. 00-1840

In The

Supreme Court of the United States

MICHAEL LEAVITT, in his official capacity as Governor of Utah; ROBIN ARNOLD-WILLIAMS, in her official capacity as Director of the Department of Human Services; and KEN PATTERSON, in his official capacity as Director of the Division of Child and Family Services,

Petitioners,

v.

DAVID C., et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Did the court of appeals err in concluding that the district court did not abuse its discretion in modifying a consent decree in light of unforeseen factual circumstances, where the modification did not impose any new obligations on the petitioners?

2. Did the court of appeals err in concluding that the district court did not abuse its discretion in enforcing an unchallenged prior order granting a remedy for petitioners' noncompliance with a consent decree?

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STATEMENT OF THE CASE

Respondents filed a class-action complaint in 1993 on behalf of all foster children in the custody of the Utah Department of Human Services and all children reported to the state as abused or neglected. The complaint described serious and widespread deficiencies in the protection, care, and services provided to these children. After some discovery, certification of the plaintiff class, and an intensive period of negotiations, the case was settled in May 1994 with the entry of a consent decree.

In the consent decree, petitioners agreed to a number of specific reforms, designed to ensure the safety and well-being of children in their foster care system. Petitioners also agreed to the creation of an independent monitoring panel to determine standards for compliance with the decree and report periodically to the parties and the court. Petitioners never challenged the validity of the consent decree or any of its terms as an order subject to court enforcement.

The consent decree provides that the district court will retain jurisdiction for the purpose of enforcing the decree, and that "the Court may enter any necessary orders to enforce the Agreement." Court of Appeals' Appendix [hereinafter "C.A. App."] at 200. This provision reflects the parties' expectation that all provisions of the decree would be subject to the normal scope of the court's equitable powers to enforce the decree, to remedy noncompliance if necessary, and to modify the decree if

circumstances changed or the decree proved unworkable as written.[1]

The consent decree contains a provision stating that "[t]he Agreement shall terminate in 48 months from the date it is given final approval by the Court." C.A. App. at 201. There is nothing in the language of the decree that elevates this one paragraph, among 92 others, to a special immunity from the court's general powers of enforcement and modification, or otherwise sets it apart from all the other provisions of the decree. Petitioners incorrectly state that there was "nothing in the Settlement Agreement allowing the parties or the court to modify or extend this end date for any reason." Petn. at 4. This provision was subject, as were all other terms of the decree, to the district court's expressly granted authority to "enter any necessary orders to enforce the Agreement," C.A. App. at 200.

In 1996, alarmed by petitioners' severe and persistent non-compliance with the decree, as shown by four consecutive monitoring panel reports and by numerous incidents of harm to children, respondents sought relief from the district court. After an extensive hearing, the district court found petitioners in noncompliance with the consent decree, and required the monitoring panel to prepare, and petitioners to implement, a comprehensive compliance plan. Order of March 17, 1997, C.A. App. at

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[1] The consent decree was drafted about two years after this Court articulated the standard for modification of consent decrees in *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 112 S.Ct. 748 (1992). The parties presumably were aware of applicable law when they entered into the consent decree.

204-232. Petitioners never appealed or otherwise challenged the factual finding of noncompliance, nor the district court's authority to enter this remedial order.

In May 1998, because this remedy had not yet been implemented, respondents sought to extend the term of the consent decree. Respondents again brought to the district court's attention numerous instances of severe harm to children in state care, including deaths of children, caused by petitioners' failure to carry out the reforms promised in the consent decree. C.A. App. at 239-289.

The district court, in its Order of August 4, 1998, found that petitioners were "80% in noncompliance" with the consent decree, and that this level of noncompliance was neither foreseen nor foreseeable by the parties or the court at the time they entered into the decree. Petitioners' Appendix [hereinafter "Pet. App."] at 28-29.[2] The district court concluded that extending the term of the consent decree would be within its equitable powers, because such a severe, persistent, and unanticipated level of noncompliance, together with the breakdown of the corrective action process, constituted a change in circumstances justifying modification of the decree. Pet. App. 23-29. However, the court refused to do so, because a specific plan had not been proposed to ensure compliance with the consent decree.

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[2] The court of appeals concluded that these factual findings were "amply supported by the evidence." Pet. App. 13.

Later in August 1998, the monitoring panel completed the "Comprehensive Plan" (so called to distinguish it from prior corrective action plans) required by the district court's Order of March 17, 1997. Respondents then sought an order to ensure implementation of the Comprehensive Plan, as also required by the Order of March 17, 1997. The district court, on September 17, 1998, took respondents' enforcement motion under submission. In response to petitioners' objection that the Plan would need revisions before it could effectively be implemented, the court deferred to petitioners' administrative expertise by granting an eight-month period for them to supplement and revise the Comprehensive Plan.[3] After petitioners submitted a revised version of the Plan, on October 18, 1999 the court ordered implementation of the Plan and retained jurisdiction during its implementation.

The district court's order of October 18, 1999 does not allow the federal judge to "run Utah's Division of Child and Family Services . . . in perpetuity," Petn. at 20, nor does it "gut" the parties' original agreement, Petn. at 15. State officials – just as they did during the original four-year term of the consent decree – still retain full control of the operation and management of their child welfare system. The Comprehensive Plan contains specific steps and compliance measures, to enable the monitor to determine when substantial compliance has been achieved

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[3] Petitioners mischaracterize the record by stating that the district judge ordered petitioners to revise the Plan because she was "[d]issatisfied with the new Comprehensive Plan, which she found incomplete." Petn. at 9.

with the reforms originally promised in the consent decree, so that the court's jurisdiction would end.

Petitioners have never challenged the substance or content of the Comprehensive Plan, nor argued that the Plan imposed any new obligations on them, beyond what they already agreed to in the consent decree. Petitioners conceded to the district court that the Comprehensive Plan was drafted in good faith by the monitoring panel and an expert consultant, working closely with state officials. Petitioners' sole contention, before the district court, the court of appeals, and this Court, is that the district court had no power to extend the *time period* and thus retain jurisdiction to ensure implementation of the Comprehensive Plan, compliance with the Court's Order of March 17, 1997, and compliance with the consent decree.

As of the present date, petitioners have not yet complied with the district court's Order of March 17, 1997, and have not fulfilled the obligations they voluntarily undertook in the consent decree. Yet petitioners continue to argue that *one* provision of the consent decree, the four-year term, is sacrosanct, but they should be free to walk away from all of their obligations under the *other 92* provisions of the decree, and under the district court's remedial order.

ARGUMENT

Reasons for Denying the Writ

This Court should deny review, first, simply because this case does not present the legal question that petitioners ask the Court to decide. Moreover, the court of appeals' decision is a correct application of this Court's precedents, and is in accord with the decisions of other federal courts. Petitioners merely seek to correct what they deem to be the court of appeals' mistaken view of the facts of this case and the application of settled law to those facts. Third, there is no conflict among the courts of appeal on the issue regarding modification of consent decrees involved in this case. Finally, the challenged order is also a valid exercise of the district court's power to enforce a prior remedial order, and there is no conflict among the federal courts as to the application of this well-settled principle of law.

I. This case does not present the legal question on which petitioners seek review.

Petitioners ask this Court to decide whether "a federal court's inherent equitable power to modify an unlitigated consent decree extend[s] to material terms bargained for by State defendants." Petn. at i. However, the court of appeals concluded:

> It is unnecessary for this court to decide whether a court lacks authority to modify an unlitigated consent decree in a way that materially expands the defendant party's obligations *because this case does not present that question.* . . . [T]he extension of the term of the

> Agreement to allow Utah to fulfill the very obligations it voluntarily undertook when it entered into the Agreement is not in itself an imposition of additional material obligations on Utah.

Pet. App. 11 (emphasis added). Thus, the court of appeals' decision in this case rests on a factual determination that the modification at issue did not impose any new obligations on petitioners. The modification granted by the district court merely extended the term of the consent decree to ensure that petitioners complied with their original agreed-upon obligations to the plaintiff class.[4] Thus, the legal issue petitioners seek to raise was not decided by the court of appeals and is not presented by this case.

Petitioners, of course, challenge the accuracy of the court of appeals' factual conclusion that the modification at issue did not impose any new obligations on them. Petn. at 12-14. However, it is not a proper use of the writ of certiorari to review and correct the factual determinations of lower federal courts, nor to address questions of the proper application of settled law to the facts of a particular case.

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[4] In contrast, in the case on which petitioners mainly rely, *Lorain NAACP v. Lorain Board of Education*, 979 F.2d 1141 (6th Cir. 1992), the court of appeals reversed a modification that dramatically increased the financial obligations of a state defendant, by eliminating a $1 million cap on the defendant's liability agreed upon in the consent decree, and ordering the defendant to "contribute an estimated $9 million" to the implementation of a desegregation decree. *Id.* at 1143.

II. The court of appeals' decision was a correct application of this Court's precedents.

Regardless of whether the court of appeals was correct in concluding that the modification at issue did not impose any new burden on petitioners, the result the court reached would still be supported by this Court's precedents regarding modification of consent decrees, and would be in accord with the decisions of other federal courts.

Petitioners concede that "[t]here is no question that, as a general proposition, a consent decree can be modified over defendants' objections, even if it was entered by the district court without any admitted or adjudicated violation of federal law by defendants." Petn. at 11. The district court in this case properly applied the standard for equitable modification of consent decrees, as articulated by this Court in *Rufo*:

> a party seeking modification of a consent decree must establish that a significant change in facts or law warrants revision of the decree and that the proposed modification is suitably tailored to the changed circumstance
>
> * * *
>
> Modification is also appropriate when a decree proves to be unworkable because of unforeseen obstacles . . . or when enforcement of the decree without modification would be detrimental to the public interest.

Id., 502 U.S. at 384, 393, 112 S.Ct. at 760, 765.

A. In *Rufo*, this Court explicitly rejected the argument that 'material' terms of consent decrees are immune from modification.

In *Rufo*, this Court explicitly rejected the basic premise of petitioners' argument – that modifying a consent decree would violate the bargained-for agreement of the parties:

> A consent decree no doubt embodies an agreement of the parties and thus in some respects is contractual in nature. But it is an agreement that the parties desire and expect will be reflected in, and be enforceable as, a judicial decree that is subject to the rules generally applicable to other judgments and decrees.

Id., 502 U.S. at 378, 112 S.Ct. at 757; *see also System Federation No. 91, Railway Employees' Dept. v. Wright*, 364 U.S. 642, 652, 81 S.Ct. 368, 374 (1961) ("[t]he type of decree the parties bargained for is the same as the only type of decree a court can properly grant;" courts may modify such decrees "when a change in law or facts has made inequitable what was once equitable"); *United States v. Swift & Co.*, 286 U.S. 106, 115, 52 S.Ct. 460, 462 (1932) ("The [parties'] consent is to be read as directed toward events as they then were. It is not an abandonment of the right to exact revision in the future, if revision should become necessary in adaptation to events to be"); *see also Duran v. Elrod*, 760 F.2d 756, 762 (7th Cir. 1985) (allowing modification will not deter parties from entering into consent decrees, because "it is only in the short run that denying all modifications will promote the observance of consent decrees. Parties will be reluctant to

sign a consent decree if they will be locked into its terms however the future may unfold").

Even if petitioners' view of the facts were correct, and the district court's order did modify a "material" term of the consent decree, the court of appeals' decision would still be correct. This Court has specifically considered and rejected in *Rufo* the very argument petitioners seek to make here, that some terms of consent decrees are so crucial to the parties' agreement that they should be immune from modification. Addressing the trial court's finding that the provision sought to be modified was "an important element . . . perhaps even the most important element" of the decree, *Rufo*, 502 U.S. at 377, 112 S.Ct. at 756-57, this Court pointed out that "[i]f modification of one term of a consent decree defeats the purpose of the decree, obviously modification would be all but impossible. That cannot be the rule." *Id.*, 502 U.S. at 387, 112 S.Ct. at 762; *see also New York State Assn. for Retarded Children v. Carey*, 706 F.2d 956, 969 (2nd Cir. 1983) (rejecting argument that modification would violate parties' agreement on a crucial issue, noting that "any modification will perforce alter some aspect of the decree").

B. This Court and the lower federal courts have consistently treated termination provisions in consent decrees as subject to the same standards for modification as other provisions.

Petitioners also attempt to argue that termination provisions of consent decrees should be treated differently from all other provisions. However, this Court and

the lower federal courts have consistently treated termination provisions as subject to the same standards for equitable modification as other terms, and petitioners cite no cases to the contrary.

In *Chrysler Corp. v. United States*, 316 U.S. 556, 62 S.Ct. 1146 (1942), this Court affirmed an order that modified a consent decree by extending a deadline, despite language in the decree describing the deadline as "an express condition of this decree." *Id.*, 316 U.S. at 558, 62 S.Ct. at 1148; *see also Holland v. New Jersey Dept. of Corrections*, 246 F.3d 267, 270 (3rd Cir. 2001) (modification power "can be used to extend the effective time period of a consent decree"); *Vanguards of Cleveland v. City of Cleveland*, 23 F.3d 1013, 1019, 1021-22 (6th Cir. 1994) ("the district court did not abuse its discretion in approving a modification to the consent decree, which temporarily extended the provisions of the consent decree"); *South v. Rowe*, 759 F.2d 610, 613 (7th Cir. 1985) ("the parties could not agree to restrict the court's equitable powers to modify its judgment enforcing the consent decree, including the two-year limitation period, in light of changed circumstances"); *Sanders v. Shell Oil Co.*, 678 F.2d 614, 617 (5th Cir. 1982) ("[i]f confronted with allegations and evidence of a discriminatory policy that threatened to thwart the . . . decree, the court undoubtably could . . . extend the supervisory period").

C. The court of appeals properly affirmed the district court's order as a correct application of the *Rufo* standard.

The Order of October 18, 1999 was properly affirmed as a correct application of the *Rufo* standard – regardless of whether or not the termination provision was a 'material' term of the consent decree. There was overwhelming evidence before the district court of changed factual circumstances: petitioners' serious and persistent failure to comply with the consent decree; the complete breakdown of the corrective action process; and serious harm to the plaintiff children caused by petitioners' noncompliance. Modification was appropriate because the "decree prove[d] to be unworkable because of unforeseen obstacles." *Id.*, 502 U.S. at 384, 112 S.Ct. at 760.

The district court acted with appropriate caution and deference to petitioners' administrative expertise, but correctly refused to permit petitioners to evade compliance with their agreed-upon obligations. The court's modification of the decree was "tailored to resolve the problems created by the change in circumstances," *Rufo*, 502 U.S. at 391-92, 112 S.Ct. at 763-64, and properly deferred to petitioners "to resolve the intricacies of implementing a decree modification," *id.*, by requiring only that petitioners implement the Comprehensive Plan they helped to design, and retaining jurisdiction only until they comply with their original obligations as defined by the consent decree.

D. There is no conflict between the court of appeals' decision in this case and any prior decisions of this Court.

Petitioners attempt to suggest some conflict between the court of appeals' application of *Rufo* in this case and this Court's prior decisions in *Firefighters Local Union No. 1784 v. Stotts*, 467 U.S. 561, 104 S.Ct. 2576 (1984) and other cases. This argument is also meritless.

Petitioners mischaracterize the holding of *Stotts*, by quoting language taken from this Court's analysis of whether the challenged order was proper as an interpretation – rather than a modification – of the consent decree. *Id.*, 467 U.S. at 574, 104 S.Ct. at 2585. For many years, this Court has made a clear distinction between the scope of district courts' powers in interpreting a consent decree, and their powers in remedying noncompliance or granting equitable modification. *See, e.g., United States v. ITT Continental Baking Co.*, 420 U.S. 223, 95 S.Ct. 926 (1975).[5]

Likewise, in *Stotts* this Court bifurcated its analysis, first considering whether the challenged order was

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[5] Three other decisions cited by petitioners, *United States v. Armour & Co.*, 402 U.S. 673, 91 S.Ct. 1752 (1971), *United States v. Atlantic Refining Co.*, 360 U.S. 19, 79 S.Ct. 944 (1959) and *Hughes v. United States*, 342 U.S. 353, 72 S.Ct. 306 (1952), also explicitly limited their analysis to whether the challenged orders were permissible as interpretation of the decrees, as opposed to modification. *Armour*, 402 U.S. at 681, 91 S.Ct. at 1757; *Atlantic Refining*, 360 U.S. at 23, 79 S.Ct. at 946; *Hughes*, 342 U.S. at 357, 72 S.Ct. at 308.

proper as an interpretation of the decree, and then considering whether it was a permissible modification. *Id.*, 467 U.S. at 575-76, 104 S.Ct. at 2586. When this Court reached the question of modification, it did indeed reverse the modification order – but for a reason that is utterly irrelevant to this case. The modification at issue in *Stotts* was improper because it forced the defendants to implement a remedy that was explicitly precluded by federal statute, and disfavored by the policies underlying the statute. *Id.*, 467 U.S. at 576 n.9, 583 n.17, 104 S.Ct. at 2586 n.9, 2590.

Petitioners' reliance on *Ford Motor Co. v. United States*, 335 U.S. 303, 69 S.Ct. 93 (1948), is also unavailing. In that case, the Court overturned an order granting an extension of an antitrust decree for the *sixth* time, *ten years* after its original expiration date, because further extension would have been fundamentally unfair to the defendants. *Id.*, 335 U.S. at 321-22, 69 S.Ct. at 102. This application of the then-current standard for modification to the facts involved is in no way inconsistent with the court of appeals' decision.

The court of appeals' opinion, which correctly applied the *Rufo* standard to the facts of this case, is not in conflict with any prior decision of this Court, nor is there any tension or lack of clarity in this Court's prior decisions concerning modification of consent decrees.

III. There is no conflict among the courts of appeal as to the modification issue involved in this case.

A. The court of appeals' decision is not in conflict with the Sixth Circuit.

Petitioners mainly rely on a Sixth Circuit case, *Lorain*, to support their contention that there is conflict among the courts of appeal as to the application of the *Rufo* standard. There is no conflict between the court of appeals' decision in this case and the *Lorain* decision. The *Lorain* court acknowledged the applicability of the *Rufo* standard for modification, and specifically recognized that this standard applies to unlitigated as well as litigated decrees. *Lorain*, 979 F.2d at 1148-49 & n.2. The result of applying the *Rufo* standard differed in *Lorain* and in this case because of sharply differing facts.

In this case, the court of appeals specifically found that the modification at issue did *not* "materially expand[ ] the defendant party's obligations." Pet. App. at 11. In contrast, in the *Lorain* case the modification at issue increased the defendant's financial liability nine times, from $1 million to $9 million. *Id.* at 1143. It is hard to imagine a more drastic expansion of a party's obligations under a consent decree. Moreover, the *Lorain* court specifically found that the purported "change in circumstances" (i.e., the cost of implementation, which had exceeded the upper limit set by the decree) "was obviously foreseeable to, and taken into account by, the parties and the court in the consent decree." *Id.* at 1153; *see Rufo*, 502 U.S. at 384, 112 S.Ct. at 760 (modification should be denied "where a party relies upon events that actually were anticipated at the time it entered into a decree"). In

contrast, in this case the district court explicitly found that the circumstances giving rise to the modification were neither foreseen nor foreseeable by the parties or the court at the time they entered into the decree, Pet. App. 28-29, and the court of appeals affirmed this finding as amply supported by the evidence. Pet. App. 13.

Likewise, the other Sixth Circuit cases cited by petitioners do not conflict with the court of appeals' decision in this case. These pre-*Rufo* cases simply involve the application of the then-current standard for modification to a range of factual situations. *See United States v. Michigan*, 940 F.2d 143, 158-59, 163 (6th Cir. 1991) (modification reversed due to lack of facts showing that "experience proved the provisions of the original decree to be less effective than anticipated or circumstances and conditions had changed to warrant modification"); *Heath v. De Courcy*, 888 F.2d 1105, 1109 (6th Cir. 1989) (modification affirmed due to changed circumstances and a showing that the proposed modification would further the original purpose of the decree in a more efficient way).

In a more recent case, *Vanguards of Cleveland v. City of Cleveland*, 23 F.3d 1013 (6th Cir. 1994), the Sixth Circuit affirmed a modification very similar to the one at issue in this case – a two-year extension of a consent decree. The court held that the modification was proper in light of changed circumstances, even though it would impose burdens on a defendant-intervener that went beyond the terms of the original decree:

> [T]he district court did not abuse its discretion in approving a modification to the consent decree, which temporarily extended the provisions of the consent decree, without [a finding

> of liability]. . . . The district court's decision . . . was an appropriate exercise of the court's discretion under . . . the court's inherent power to modify a consent decree to effectuate the purposes of the decree.

Id. at 1021-22.

B. The court of appeals' decision is not in conflict with the Third Circuit.

Petitioners' next argument, that there is conflict between the court of appeals' decision in this case and Third Circuit case law, is untenable in light of the Third Circuit's analysis in a recent case strikingly similar to this one. *Holland v. New Jersey Dept. of Corrections*, 246 F.3d 267 (3rd Cir. 2001), involved a consent decree "which provided that it would be in effect for four years from the date it was implemented and that the District Court was authorized to take 'such action as may be necessary or appropriate to effectuate the purposes of this Decree.' " *Id.* at 270. Because of "problems with implementation" the district court issued an order extending the decree by ten months beyond its four-year term, basing this order both on the equitable power to modify consent decrees in light of changed circumstances, and the power to remedy noncompliance. The court of appeals concluded that under *Rufo*, the district court's power to modify consent decrees "can be used to extend the effective time period of a consent decree." *Id.*[6]

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[6] The court, however, remanded the case because the district court did not make adequate factual findings to "specify

The other Third Circuit cases cited by petitioners also provide no support for their claim of a circuit conflict. *Harris v. City of Philadelphia*, 137 F.3d 209 (3rd Cir. 1998), did not involve modification of a consent decree at all. The court in *Harris* simply held that a district court's *sua sponte* imposition of new terms on a party "to effectuate its conception of the purpose of the . . . Decree" was inappropriate, in the absence of any showing of noncompliance or any request for modification. *Id.* at 212-13. In *Fox v. HUD*, 680 F.2d 315 (3rd Cir. 1982), decided more than ten years before *Rufo*, the Third Circuit reversed a modification order because it was based on "changes [in factual circumstances] . . . beyond the control of the defendants that might have been anticipated by the plaintiffs." *Id.* at 323; *cf Rufo*, 502 U.S. at 384, 112 S.Ct. at 760 (party seeking modification need not show that changed circumstances were unforeseeable, but only that they were unforeseen by the parties).

C. The court of appeals' decision is not in conflict with the Second Circuit.

The Second Circuit cases cited by petitioners do not even involve modification of consent decrees. *United States v. International Brotherhood of Teamsters*, 141 F.3d 405 (2nd Cir. 1998), simply involved the interpretation of the terms of a consent decree in the absence of any allegation of noncompliance or any motion to modify. In *EEOC v. Local 40*, 76 F.3d 76 (2nd Cir. 1996), after the plaintiffs

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the changed conditions that would justify the modification" and to ensure that the modification was suitably tailored. *Id.* at 271.

allowed the three-year term of a consent decree to expire without any claim of noncompliance or motion to modify, the Second Circuit properly held that it was error to revive and enforce the decree *ten years* after its expiration.

IV. The district court's order was also a proper exercise of the well-established equitable power to enforce a valid and unchallenged prior order.

Apart from any question of the district court's power to modify consent decrees, there was an alternative and sufficient legal basis for the order at issue. Thus, even if the district court's order had not been within its equitable power to modify a consent decree, it would still have been properly affirmed by the court of appeals.

In the Order of March 17, 1997, the district court granted a remedy, after finding petitioners in noncompliance with the consent decree. Petitioners did not appeal that order. This order required petitioners to help develop, and to implement, a comprehensive compliance plan, and it had no expiration date. Petitioners have not yet complied with the Order of March 17, 1997. In light of these circumstances, the district court acted well within the scope of its undisputed power to enforce its own prior remedial orders, by retaining jurisdiction until petitioners implement the Comprehensive Plan as required by the Order of March 17, 1997.[7]

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[7] Because the court of appeals ruled that the Order of October 18, 1999 was a permissible modification of the consent decree, the court found it "unnecessary for this court to address Appellees' argument that the district court's order . . . is a valid

Petitioners have not argued, and cannot argue, that district courts lack the equitable power to order remedies for noncompliance with a consent decree that go beyond the original terms of the decree. *See United States v. ITT Continental Baking Co.*, 420 U.S. 223, 95 S.Ct. 926 (1975) (when a defendant has been found in noncompliance with a consent decree, the language of the decree itself does not define the outer limits of the court's remedial power); *Spallone v. United States*, 493 U.S. 265, 275, 110 S.Ct. 625, 632 (1990) (courts have inherent power to enforce compliance with their lawful orders).

Numerous appellate cases have affirmed this settled principle, including cases specifically involving extensions of the term of a consent decree. *See, e.g., Holland*, 246 F.3d at 282 (compliance enforcement power "can be used to extend a consent decree"); *United States v. Local 359, United Seafood Workers*, 55 F.3d 64 (2nd Cir. 1995) (extending term of parts of consent judgment was proper exercise of compliance enforcement power); *Commonwealth of Pennsylvania v. Local Union 542*, 807 F.2d 330 (3rd Cir. 1986) (district court did not abuse its discretion in extending term of decree as remedy for noncompliance); *Norman v. McDonald*, 930 F.Supp.1219, 1226 (N.D.Ill. 1996) (extension of monitoring period beyond termination date specified in the consent decree was "appropriate enforcement relief" for defendants' noncompliance).

Petitioners do not cite any contrary authority, nor any case suggesting uncertainty or conflict among the

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exercise of the court's power under the Enforcement Provision to enforce its March 17, 1997 order." Pet. App. 7, n.1.

courts of appeal as to the application of this settled legal principle. Thus, even if the district court's order were not a proper application of the *Rufo* standard for modification, it would still have been properly upheld as an exercise of the district court's power to enforce a prior, unchallenged remedial order.

CONCLUSION

The court of appeals correctly affirmed the district court's order, as within its discretion to modify a consent decree in light of changed circumstances. The writ of certiorari should be denied because this case involves only the correct application of settled law to the facts. The legal question on which petitioners seek review is not presented by this case, and was not decided by the court of appeals. There is no conflict among the courts of appeal as to any issue raised by this case.

Respectfully submitted this 12th day of July, 2001.

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